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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,226	02/26/2001	Arnout Imhof	1279-237D/09804152	4056

167 7590 08/13/2002

FULBRIGHT AND JAWORSKI L L P
PATENT DOCKETING 29TH FLOOR
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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 08/13/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,226

Applicant(s)

Imhof et al.

Examiner

Paul Marcantoni

Group Art Unit

1255

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/25/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 20-23 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 20-23 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Applicant's arguments filed 7/15/02 have been fully considered but they are not persuasive.

Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klopries et al. '077, Van T Teen et al. '590, Artemova et al., or HU 37732 (Draveccky et al.).

Klopries et al. teach a macroporous ceramic support comprised of alumina which would appear to have distributed micropores therein (see claims).

Van T Teen teaches a macroporous ceramic support with a microporous layer (see claims).

Artemova et al. and HU 37732 all teach macroporous ceramics (see abstract).

Claims 20-23 are not commensurate with the original enabling disclosure and are rejected under 35 USC 112 first paragraph. The applicants state that pore size should be in the range of 0.05 to 5 microns (page 6 Detailed Description) and thus this would appear critical to the instant invention and necessary limitation of claim 20.

The applicants amendment of claim 20 also necessitated the following new grounds of rejection:

Claims 20-23 are rejected under the first paragraph of 35 USC 112 and 35 USC 132 as the specification as originally filed does not provide support for the invention as is now claimed.

The range for pores of at least 0.5 microns is not supported by the original disclosure. Only support is for a range of 0.05 to 5 microns.

Claims 20-23 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention

Claim 20 would appear indefinite because applicants do not particularly point out and distinctly claim the critical size of the micropores critical to their invention. The applicants' range for pore size should be in the range of 0.05 to 5 microns and this should be part of claim 1.

Response:

The applicants argue that Klopries et al. teach the catalyst support has as few micropores and mesopores as possible. Yet, it would appear applicants argue a limitation that they themselves do not claim. Namely, there is no limitation for the number of micropores in claims 21 through 23. It is improper to argue a limitation that is not part of the claimed invention.

The applicants next argue that Klopries et al. do not teach a uniform pore structure. In rebuttal, it also does not teach that it does not have a uniform pore structure. In addition, what exactly do applicants mean by "substantially" uniform? Do they mean pore size difference of 20%? If so, that definition differs from simply a uniform particle size. The applicants also admit that the silver particles are uniformly distributed on the surface of the porous support. It would appear to follow that the pores to which they enter into would be also uniform to provide a uniform surface of silver.

The applicants argue Van Tveen '590 is directed to microporous materials and not to macroporous materials. In rebuttal, the pore diameter size range of Van Tveen

would appear to overlap because they teach an predetermined average pore diameter falling in the range of 10 to 100 microns (see claim 1). Note that the applicants' claim 1 contains no upper range limit so Van Tveen still would read upon the instant invention. Van Tveen teaches that the average pore diameter can be 1 micron which overlaps the pore diameter claimed by applicants for their invention.

The applicants next argue that the Hungarian and Russian abstracts refer to very high pore sizes and even that the Hungarian abstract teaches a range of 50 to 300 microns. In rebuttal, the applicants' claim 20 reads upon the prior art because there is no upper limit for pore diameter. Claim 20 only requires that the macroporous ceramic has pores of at least .05 microns which is met by these foreign abstracts.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is (703)-308-1196. The examiner can normally be reached on 4-10 Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3599 for regular communications and (703)-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

August 12, 2002



PAUL MARCANTONI
PRIMARY EXAMINER
GROUP 1700